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World Intellectual Property Organization

Summary

The present note, submitted by the secretariat of the World Intellectual Property Organization (WIPO) for consideration at the in-depth dialogue of the eleventh session of the Permanent Forum on Indigenous Issues, is a concise summary of the action undertaken or planned by WIPO regarding indigenous peoples' issues.

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I. Introduction

1. At its tenth session, held from 16 to 27 May 2011, the Permanent Forum on Indigenous Issues adopted two recommendations specifically addressed to the World Intellectual Property Organization (WIPO):

> "The Permanent Forum welcomes the World Intellectual Property Organization facilitating a process, in accordance with the Declaration, to engage with indigenous peoples on matters including intellectual property, genetic resources, traditional knowledge and folklore.[1]
>
> "The Permanent Forum recognizes the right to participate in decision-making and the importance of mechanisms and procedures for the full and effective participation of indigenous peoples in relation to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples. The Forum reiterates that the United Nations Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the World Intellectual Property Organization and the International Maritime Organization should facilitate indigenous peoples' participation in their processes."[2]

2. In this note, WIPO would like to draw attention to: (a) recent developments in the negotiations being undertaken by its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; (b) mechanisms to facilitate the participation and contribution of indigenous peoples and local communities in the work of the Intergovernmental Committee; and (c) capacity-building and awareness-raising initiatives that have been undertaken by WIPO in 2011.

II. Status and renewed mandate of the norm-setting work

3. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established in 2000 and is currently undertaking text-based negotiations for the effective protection of traditional knowledge and traditional cultural expression and to address the intellectual property aspects of access to and sharing of benefits from the use of genetic resources.

4. The WIPO submission to the tenth session of the Permanent Forum (May 2011) reported on the sessions of the Intergovernmental Committee held since the adoption of its mandate for the biennium 2010-2011, including the fifteenth, sixteenth and seventeenth sessions, which took place in December 2009 and in May and December 2010, as well as the first session of the Intersessional Working Group in July 2010. The focus of work at all of the sessions was on the issue of traditional cultural expression.

5. Under its mandate for 2010-2011, the Intergovernmental Committee held its eighteenth and nineteenth sessions in May and July 2011. The second and the third sessions of the Intersessional Working Group met in February and March 2011: the

[1] E/2011/43, para. 28.
[2] E/2011/43, para. 31.

second session of the Intersessional Working Group focused on traditional knowledge and the third session on genetic resources. The texts produced on the three substantive themes (traditional knowledge, traditional cultural expressions and genetic resources) were accepted by the Intergovernmental Committee as bases for future work.[3]

6. The Assemblies of the member States of WIPO, at their fortieth (20th ordinary) session in September/October 2011, considered the draft texts and recommended decisions submitted by the Intergovernmental Committee and decided to renew its mandate for the biennium 2012-2013. The Intergovernmental Committee will, without prejudice to the work pursued in other forums, "expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions".[4] In 2012, the Intergovernmental Committee will follow a clearly defined programme of work that makes provision initially for four sessions, three of which will be thematic. The twentieth session of the Intergovernmental Committee will take place in February, with a thematic focus on genetic resources. The twenty-first session, which will be on traditional knowledge, is scheduled to take place in April, and the twenty-second session, on traditional cultural expressions, will be held in July.

7. The Intergovernmental Committee is requested to submit the text(s) of an international legal instrument(s) to the session of the Assemblies of the member States of WIPO in September 2012. The Assemblies will then consider the progress made and decide on the convening of a diplomatic conference. The twenty-third session, the last of the four mandated sessions of the Intergovernmental Committee, is tentatively scheduled for 2013 in order to consider the decisions of the 2012 session of the Assemblies and to take stock of further work required to finalize the text(s).

III. Participation of indigenous peoples and local communities in the work of the Intergovernmental Committee

8. The member States of WIPO have repeatedly stressed the importance attached to facilitating and enhancing the participation of observers in the work of the Intergovernmental Committee. Since its inception the Committee has undertaken a number of steps to encourage the direct participation of observers in its process, as well as their capacity-building needs, in order to bring about their meaningful engagement in that process.

Accreditation

9. At its first session, in April 2001, the Intergovernmental Committee, recognizing that many of the stakeholders with a direct interest in the work of the Committee, especially indigenous and local communities, did not enjoy permanent

[3] The most recent drafts of the working documents are available from http://www.wipo.int/tk/en/igc/index.html.

[4] The full text of the mandate of the Intergovernmental Committee for the biennium 2012-2013 is available from http://www.wipo.int/export/sites/www/tk/en/documents/pdf/decision_assemblies_2011.pdf.

observer status at WIPO, agreed to allow the participation of certain organizations as ad hoc observers,[5] and it has continued this practice at every session.

10. In accordance with the agreed "fast-track" procedure, decisions on accreditation are made by member States at the beginning of each session of the Intergovernmental Committee based on the documentation containing biographical details of organizations requesting representation in the sessions of the Committee. Currently there are 268 organizations accredited to the Committee, many of them indigenous peoples' and local communities' organizations.

WIPO Voluntary Fund for Accredited Indigenous and Local Communities

11. In 2005, the WIPO General Assembly established the WIPO Voluntary Fund for Accredited Indigenous and Local Communities in order to enhance the participation of representatives of indigenous peoples and local communities already accredited to the Intergovernmental Committee in its sessions. The rules of the Fund were amended by the WIPO General Assembly in September 2010 to include the intersessional working groups in its scope. The establishment of the Fund was noted with appreciation and donor contributions were encouraged by the Permanent Forum at its fifth session in 2006.[6]

12. Decisions on funding are made by the Director General of WIPO, based on recommendations of the Advisory Board, which selects candidates to receive funding. Nine members of the Advisory Board, nominated both by the delegations of WIPO member States and by accredited observers representing indigenous or local communities, meet during the sessions of the Intergovernmental Committee.

13. According to the rules, the extent of support that the Fund can provide depends exclusively on the voluntary contributions made by donors. In the early years of the Fund, several donors[7] made significant contributions, and it operated successfully. By mid-2011, however, the Fund had effectively run out of money. On 20 October 2011, the Government of Australia made a contribution to the Fund of 89,500 Swiss francs, an amount which should allow the Fund to continue to operate through the twentieth, twenty-first and twenty-second sessions of the Intergovernmental Committee planned for 2012. In view of the crucial need to ensure the adequate participation of indigenous and local communities in the negotiations, there are continuous efforts to encourage other member States and public or private entities to contribute to the Fund to ensure its operation beyond the twenty-second session of the Committee.

Panel of representatives of indigenous and local communities

14. In November 2004, at the seventh session of the Intergovernmental Committee, the delegation of New Zealand proposed that the Committee consider some practical changes to its procedure to enable more effective participation by indigenous and local community observers. The proposed arrangements included the

[5] WIPO/GRTKF/IC/1/2, para. 8, and WIPO/GRTKF/IC/1/13, para. 18.

[6] E/C.19/2006/11, para. 171.

[7] Since its creation in 2005, the Fund has benefited from contributions from the Christensen Fund, the Swedish International Biodiversity Programme, the Swiss Federal Institute of Intellectual Property (on two occasions), from the Governments of Australia, France, Norway and South Africa (on two occasions) and from an anonymous contributor, totalling 604,489.53 Swiss francs.

incorporation of panel presentations by members of indigenous and local communities as part of the plenary of the Committee.[8] Pursuant to that proposal, the Committee decided that future sessions of the Committee should be preceded by panel presentations by members of indigenous and local communities.[9] The panels are made up of participants from indigenous and local communities from different sociocultural regions.

15. The presentations are a rich source of information on the experiences, concerns and aspirations of indigenous and local communities concerning the protection, promotion and preservation of traditional knowledge, traditional cultural expressions and genetic resources. Although the panels do not form a formal part of the Intergovernmental Committee sessions, summary records of their proceedings are included in the reports on the sessions. Presentations by panel participants are also made available on WIPO's traditional knowledge, traditional cultural expressions and genetic resources webpage.[10]

Preparatory consultative arrangements

16. Each session of the Intergovernmental Committee is preceded by a meeting of the indigenous consultative forum, where the representatives of indigenous peoples and local communities who chair the meeting can meet and prepare for the session together. The consultative forum takes place at WIPO headquarters on the day before the opening of the session. The Intergovernmental Committee has decided that meetings of the forum are related to the Committee, so funding from the Voluntary Fund is extended for the meetings of the forum. The secretariat is on hand to provide input on substantive and organizational issues, if so invited, during the meeting. On occasion, the forum has invited delegates of member States and the Chair of the Intergovernmental Committee to participate in its meetings.

Administrative support

17. During the sessions of the Intergovernmental Committee, WIPO finances the logistical, secretarial, interpretation and translation support provided by the Indigenous Peoples' Center for Documentation, Research and Information for meetings of the representatives of indigenous and local communities. Such support, although requiring a modest financial contribution, significantly facilitates the development of the information and communications capacity of participating representatives and is highly appreciated by observers.

Information tools and resources

18. Through the WIPO traditional knowledge, genetic resources and traditional cultural expressions/folklore resources web page, all current drafts, draft proposals, working documents, comments, papers, studies, databases, questionnaires and other materials prepared for consideration by the Intergovernmental Committee, including comprehensive reports of its sessions in Arabic, Chinese, English, French, Russian

[8] The full text of the proposal by the delegation of New Zealand is contained in document WIPO/GRTKF/IC/7/14.

[9] WIPO/GRTKF/IC/7/15, para. 35.

[10] See http://www.wipo.int/tk/en/ngoparticipation/ind_loc_com/index.html.

and Spanish, are made available to the public.[11] Electronic updates and newsletters concerning relevant developments and events are regularly sent by e-mail.

19. Among recent additions, the web page now has links to background briefs on selected topics, a "snapshot", which provides a concise and factual overview of the latest developments in the Intergovernmental Committee, and frequently asked questions. A distinct web page is devoted to proposals, submissions and papers of observers.[12] The secretariat is constantly making efforts to ensure that the web page effectively responds to information and awareness needs of the member States and observers. Written guidance on the procedures of the Committee and on how to participate in its discussions are made available at the Committee's sessions and on the WIPO traditional knowledge, genetic resources and traditional cultural expressions web page.[13]

Consultancy by indigenous experts

20. Building on the initiatives that have been taken to ensure indigenous peoples' participation in the activities of WIPO relevant to traditional knowledge and traditional cultural expressions, WIPO seeks to foster the strong legal expertise that already exists within indigenous communities. To that end, WIPO has appointed several indigenous experts as consultants on specific projects.

WIPO Indigenous Intellectual Property Law Fellowship Programme

21. Since 2009, WIPO has offered indigenous legal experts the opportunity to work at WIPO and to directly participate in the delivery of core programme outputs of its Traditional Knowledge Division.[14] Following an open and competitive selection process, three successive indigenous fellows have worked at the organization for periods of six to nine months. The same opportunity will be given to a fourth indigenous fellow for a period of nine months starting in February 2012.

Briefings

22. Specific briefings and consultations for representatives of indigenous peoples and local communities, other observers and civil society at large are undertaken within the framework of the sessions of the Intergovernmental Committee. Upon invitation, or on its own initiative, the secretariat also provides briefings on the work of the Intergovernmental Committee on the margins of other United Nations meetings on related matters.

23. In May 2011, during the eighteenth session of the Intergovernmental Committee, WIPO, in cooperation with the United Nations Office of the High Commissioner for Human Rights (OHCHR), organized a panel discussion on the United Nations Declaration on the Rights of Indigenous Peoples. At the tenth

[11] See http://www.wipo.int/tk/en/.

[12] See http://www.wipo.int/tk/en/igc/ngo/ngopapers.html.

[13] See Practical Information for Delegates (http://www.wipo.int/export/sites/www/tk/en/igc/documentation/info_delegates.pdf), Facilities for Accredited Organizations Representing Indigenous and Local Communities (http://www.wipo.int/tk/en/igc/documentation/info_ngos.pdf) and Making Your Intervention (http://www.wipo.int/tk/en/igc/documentation/intervention.pdf).

[14] For further details on the programme, see http://www.wipo.int/tk/en/training/fellowship/index.html.

session of the Permanent Forum on Indigenous Issues, WIPO co-sponsored a side-event, organized by the American Indian Studies Center of the University of California in Los Angeles, on preservation and protection of the cultural heritage and intellectual property of indigenous peoples.

24. On the margins of the fourth session of the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council and the seventh meeting of the Ad Hoc Open-Ended Intersessional Working Group on Article 8 (j) and Related Provisions of the Convention on Biological Diversity, held in July and November 2011, respectively, WIPO organized panel discussions on indigenous peoples' traditional knowledge and intellectual property, the Intergovernmental Committee process and the status of negotiations. Representatives of indigenous peoples were invited to speak at all of the briefings.

Review of observers participation procedures

25. The fortieth (20th ordinary) session of the Assemblies of the member States of WIPO, when renewing the mandate of the Intergovernmental Committee for the biennium 2012-2013, also invited the Committee to review its procedures with a view to enhancing the positive contribution of observers to its process. In order to facilitate this review, the secretariat of WIPO was requested to prepare a study on the participation of observers in the work of the Committee. According to the decision of the General Assembly, the study should outline current practices and potential options in this regard. The study will be submitted for consideration by the Committee at its twentieth session, in February 2012. Any outcomes of the review of observer participation in the work of the Committee will be communicated to the upcoming session of the Permanent Forum on Indigenous Issues in May 2012.

IV. Capacity-building and awareness-raising initiatives on national, regional and international levels

26. For over 10 years, in addition to its intensive norm-setting activity, WIPO has, upon request, undertaken technical assistance activities on the protection of traditional knowledge, traditional cultural expressions and genetic resources against misappropriation and misuse. WIPO's capacity-building activities in this area comprise a range of complementary practical activities, including national and regional consultations, legislative assistance, awareness-raising and training. These are examples of capacity-building activities that WIPO continued to carry out in 2011.

WIPO Cultural Documentation and Intellectual Property Management Training Programme

27. Responding to the needs of indigenous and local communities to record and promote their cultural heritage without ceding authority over the use of their documented living heritage, WIPO established, within the framework of its Creative Heritage Project,[15] a training programme which focuses on providing communities

[15] The Creative Heritage Project was set up in 2006 as a capacity-building programme in the management of intellectual property rights and interests for indigenous peoples, local communities and cultural institutions. For more information on different activities of the project, see http://www.wipo.int/tk/en/culturalheritage/index.html.

with the skills and knowledge needed to record and archive their heritage, as well as to safeguard their intellectual property for future generations and their interest in managing access to their cultural documentation.

28. The training programme is offered by WIPO in partnership with two American institutions with particular expertise in the field of documentation, namely the American Folklife Center at the United States Library of Congress[16] and the Center for Documentary Studies at Duke University.[17] The aim of the training programme is to empower indigenous communities socially, culturally and economically through training them to: (a) document their own intangible cultural heritage, (b) archive the documentation for future generations and (c) safeguard their intellectual property rights and interests through the use of digital recordings. The programme contributes to promoting local economic and cultural development by supporting communities in establishing their own strategies for an equitable and balanced use of their cultural property.

29. A pilot of the training programme was conducted in 2008-2009 for the Maasai community of Laikipia, Kenya, following the community's request for WIPO's assistance with recording and archiving their cultural expressions in accordance with the community's wishes regarding the protection of its intangible cultural heritage against misappropriation. In 2011, a similar training programme was provided, in collaboration with American Folklife Center and Center for Documentary Studies, to some communities in Central America and the Caribbean, and future editions of the programme are expected to take place in other parts of the world.

Traditional knowledge action plan

30. Examples of technical assistance projects include the Traditional Knowledge Action Plan, a partnership project in which WIPO, in collaboration with the Pacific Islands Forum Secretariat, the secretariat of the Pacific Community and the secretariat of the South Pacific Regional Environmental Programme, provides assistance on intellectual property and traditional knowledge matters to six Pacific Island countries, namely Cook Islands, Fiji, Kiribati, Palau, Papua New Guinea and Vanuatu. As part of the initial phase of implementing the action plan, WIPO, in partnership with the Pacific Islands Forum Secretariat, organized briefings for experts from the countries and follow-up activities for the ongoing implementation of the national activities foreseen in the plan. An indigenous expert, Ms. Terri Janke from Australia, advises WIPO on the project.

31. A similar regional framework on traditional knowledge, traditional cultural expressions and genetic resources is being established in the Caribbean with assistance from WIPO. For that purpose, a working group has been established to undertake research, fact-finding and consultations (with indigenous and local communities, government officials, non-governmental organizations, users and other relevant stakeholders) and to develop, with the participation of representatives of indigenous communities, a harmonized framework for review by Caribbean member States. WIPO provides continuous advice and support to the two regional processes.

[16] For information on the American Folklife Center, see http://www.loc.gov/folklife/.

[17] For information on the Center for Documentary Studies, see http://cds.aas.duke.edu/.